IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 11TH DECEMBER 2007 / 20TH AGRAHAYANA 1929

OP.No. 758 of 2000(M)

PETITIONER:

THE REGIONAL MANAGER,
CENTRAL BANK OF INDIA,
REGIONAL OFFICE,
GOPAL BUILDING,
THYVILA ROAD,
TRIVANDRUM.

BY ADV. SRI.V.V.SIDHARTHAN
SRI.T.SAJI

RESPONDENTS:
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1. THE INDUSTRIAL TRIBUNAL,
KOLLAM.

2. K.V.SUDHAKARAN,
KARAVEETTIL THEKKATHIL,
KARICODE, T.K.M.COLLEGE P.O.,
KOLLAM-5.

R2 BY ADV. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 11/12/2007, ALONG WITH OP NO. 757 OF 2000, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NOS.1174&5972/2000 IN O.P. NO.758/2000

DISMISSED:

11.12.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE CLAIM STATEMENT FILED BY R2 BEFORE R1 IN ID 32/97.

P2: TRUE COPY OF THE OBJECTION FILED BY PETITIONER IN ID 32/97 BEFORE R1.

P3: TRUE COPY OF THE REJOINDER FILED BY R2 BEFORE R1 IN ID 32/97.

P4: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER FOR PRODUCTION OF THE DOCUMENTS IN ID 32/97 BEFORE R1.

P5: TRUE COPY OF THE NOTIFICATION DT.8.7.99 ISSUED BY THE GOVT. OF INDIA, MINISTRY OF LABOUR.

P6: TRUE COPY OF THE AWARD DT.7.6.1999 IN ID 32/97 PASSED BY R1.

TRUE COPY

PA TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. Nos.757 & 758 of 2000

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Dated this the 11th day of December, 2007.

JUDGMENT

The common petitioner is challenging separate awards passed by the Industrial Tribunal, Kollam directing the petitioner to absorb the second respondent in both the O.Ps. in it's service with full back wages. The petitioner is a nationalised Bank which admittedly engaged the second respondent in both the O.Ps. as casual workers. The case of the second respondents in both the cases is that they were appointed as Peons on daily wages. However, they claimed regular employment on the ground that each one of them have completed 240 days of employment under the petitioner during the period of their service. Since the petitioner declined the claim for regularisation, second respondent got the industrial dispute referred by the appropriate Government to the Industrial Tribunal at Kollam, which upheld their claim against which O.Ps. are filed.

2. I heard counsel appearing for the petitioner and counsel appearing for second respondent and have also gone through the impugned award. The contention of the petitioner is that the Tribunal's decision is based on the Shasthri award which was superceded by several bipartite settlement

between the management and the workers and therefore, the decision is untenable. Counsel for the second respondent on the other hand contended that the Tribunal allowed the claim of second respondent based on a Circular issued by the petitioner-Bank under the settlement with workers whereunder a person who served the Bank on casual employment for 240 days in an year was entitled to regularisation in service. On going through the award I find reinstatement is ordered essentially relying on the Circular issued by the Bank, the relevant clause of which is extracted hereunder:

> "3. Employees who have put in 240 days temporary service:-
>
> 3.1. Temporary employees who have put in 240 days of temporary service in any continuous period of 12 months after 1.1.82 upto 31.12.90 will be considered for absorption in the immediate available vacancies without any test and interview."

From the above it is clear that an employee who has put in 240 days of temporary service in an year from 1.1.1982 to 31.12.1990 will be considered for absorption in the immediately available vacancies without any test or interview. In the case of second respondent in both the cases, they had seized to work for the Bank in 1989. The respondents do not appear to have made any application against regular vacancy based on the Circular and proof of temporary employment for 240 days.

3. The next question to be considered is whether the Tribunal is justified in regularising the service based on the Circular. Counsel for the petitioner rightly contended that the Circular does not give rise to any right to employment, but is only a right to be considered against a vacancy which will again depend on the relative claims of eligible applicants as and when applications are called for. The next contention raised by the petitioner is that the respondents have not proved that they have completed 240 days of service in any year to entitle them for absorption even under the Circular. The petitioner has relied on the decisions of the Supreme Court in H.U.D.A. V. JAGMAL SINGH (2006(III) LLJ 152), in RAJASTHAN STATE GANGANAGAR S.MILLS LTD. V. STATE OF RAJASTHAN (2004(8) SCC 161) and the Constitution Bench decision in SECY., STATE OF KARNATAKA V. UMADEVI (2006) 4 SCC 1. In the decision first abovereferred, the Honourable Supreme Court held that a Sweeper appointed on daily wages for less than 240 days is not entitled to regularisation. In the decision second abovereferred, the Honourable Supreme Court held that it is for the claimant-workman to show that he had in fact worked for 240 days in the year preceding his termination. It is further held that a mere statement in this regard on the part of the workmen cannot be treated as sufficient evidence. In the last decision referred above

the Constitution Bench of the Supreme Court held that temporary or casual employees are not entitled to regularisation in service. The petitioner has referred to the separate statements filed by the workmen and also the evidence given by both of them. In the case of second respondent in O.P. 757/2000, the claimant has stated that from September 1985 to August 1986 he has worked for 249 days and in the course of 5 years he has worked for 587 days. In the first place, no documentary evidence is produced by that workman to establish his employment for 240 days. Going by his evidence it is clear that he has not worked for 240 days in any year. A statement furnished by him to the Assistant Labour Commissioner (Central) which is marked as Ext.W1 shows that even according to him, he has worked in 1985 for 127 days, during 1986 for 189 days, during 1987 for 113 days, during 1988 for 102 days and during 1989 for 46 days. Counsel for the workmen has relied on the decision of the Supreme Court in WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPN. V. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPN. (1985(4) SCC 71) and contended that holidays should be added to the working days to arrive at the total days worked by the workman during an year. I do not think addition of holidays will make up 240 days atleast for five years i.e except for the year 1986. The evidence

of the workman for this year is that he has completed 245 days in the course of two financial years including 1986. Obviously the workman can claim addition of only intervening holidays between two working days worked by him and in the absence of any evidence, full holidays in an year cannot be added to the actual days worked by him. The Industrial Tribunal also has not given any finding that with addition of holidays, the second respondent in O.P. 757/2000 had 240 working days to his credit during the year 1986. Therefore, the second respondent in O.P. 757/2000 is not entitled to protection of the Circular abovereferred. Actually he is entitled to regularisation just on production of proof that he worked for 240 days in any of the relevant years. So far as the second respondent in O.P. 758/2000 is concerned, even according to W1 statement furnished by him, he has worked for 127 days during 1985, 189 days during 1986, 113 days during 1987, 102 days during 1988 and only 46 days during 1989. It is clear from the statement that the said respondent has no case that he has worked for 240 days in any year. Here again the counsel requested for additional holidays which I do not think second respondent is entitled or will help him to achieve 240 days for any year. Counsel for the second respondent relied on the decision of the Supreme Court in YELLATTI R.M. V. ASSISTANT EXECUTIVE ENGINEER (2006(1) LLJ 442) and contended that second

respondent has discharged his burden by giving oral evidence. However, on going through the evidence I find besides the oral evidence, the respondent in that case issued a certificate which served as a documentary evidence in support of the claim of the workman that he has worked for 240 days. In this case the oral evidence of the claimants wer only in support of the separate statement furnished by them to the Assistant Labour Commissioner which are discussed above and which do not prove that the claimants worked 240 days in any year. Counsel for the claimants further contended that the Bank declined to furnish copies of vouchers called for by the Labour court on application by the claimants and therefore, an adverse inference should be drawn against the Bank. Counsel for the Bank on the other hand contended that vouchers in an year run into lakhs and it is physically impossible for the Bank to produce the entire vouchers in court. Since the claimants have not furnished details of the vouchers, the Bank obviously could not furnish the same. Moreover, claimants cannot prove anything beyond their claim which is stated in Ext.W1 statements produced whereunder both workers do not have a claim that they worked for 240 days in any year. In the circumstances, I do not think any adverse inference can be drawn against the Bank for non-production of entire vouchers of several years when the claimants have worked as casual employees in the Bank.

4. The petitioner being a Nationalised Bank, I feel the Constitution Bench decision of the Supreme Court in SECY., STATE OF KARNATAKA V. UMADEVI (2006) 4 SCC 44 squarely applies to the Bank which has to follow certain procedure for appointment of employees on regular basis. The Constitution Bench of the Supreme Court has held in the said decision as follows:

> "Though regular appointment as per the constitutional scheme for public employment must be the rule, there is nothing in the constitutional scheme which prohibits the Union or State Governments or their instrumentalities from engaging persons temporarily or on daily wages inspite of the constitutional scheme governing public employment, without following the required procedure, to meet the needs of the situation -- However, consistent with the scheme for public employment, unless the appointment is in terms of the relevant rules and after a proper competition amongst qualified persons, the same would not confer any right on the appointee -- Therefore, a contractual appointment comes to an end at the end of the contract, an appointment on daily wages or casual basis comes to an end when it is discontinued, and a temporary appointment comes to an end on the expiry of its term -- No employees so appointed can claim to be made permanent on the expiry of their appointments -- For, when regular vacancies in posts are to be filled up, a regular process of recruitment or appointment has to be resorted to as per the constitutional scheme, and cannot be done in a haphazard manner based on patronage or other considerations -- Service Law -- Casual Labour/Temporary Employee."

From the above it is clear that second respondent in both the O.Ps. are not entitled to any regularisation in service of the petitioner which is a

Nationalised Bank. Moreover, the last year in which the claimants were employed as casual employees was 1989 i.e.18 years back and there is no justification for ordering appointment of the claimants on any ground. In any case the claimants have got Section 17B benefit ordered by this court during pendency of the O.Ps. The O.Ps. are accordingly allowed setting aside the impugned awards of the Labour Court.

C.N.RAMACHANDRAN NAIR
Judge

pms